

FOR PUBLICATION

ATTORNEY FOR APPELLANT:

JOHN D. FIEREK
 Voyles Zahn Paul Hogan & Merriman
 Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TIMOTHY S. COLLINS,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A04-0411-CR-593

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable J. Richard Campbell, Judge
Cause No. 29D04-0307-CM-4780

August 18, 2005

OPINION ON REHEARING - FOR PUBLICATION

FRIEDLANDER, Judge

We grant Collin's petition for the purpose of clarifying our original opinion, and we reaffirm our opinion in all other respects.

In an unpublished memorandum decision, this court vacated Timothy S. Collins's sentence of 365 days in jail, all but 10 days suspended, with 4 days credit; and 365 days probation. *See Collins v. State*, Case No. 29A04-0411-CR-00593, ___ N.E.2d ___ (Ind. Ct. App. June 15, 2005). The pertinent facts are set out in that opinion and need not be repeated in detail here. The State and Collins have filed separate petitions for rehearing. Collins has petitioned this court for rehearing, alleging our previous opinion failed to include the 355-day suspended sentence in determining the aggregate maximum sentence prescribed by statute. We grant the petition for the limited purposes of clarifying our opinion.

We held the trial court's sentence must be vacated because the aggregate incarceration and probationary periods exceed the statutorily prescribed maximum. In vacating Collins's sentence, we did not intend to imply that "incarceration" included only the ten-day executed period of imprisonment. Instead, we intended, and clarify here, that the incarceration period includes the entire portion of Collins's sentence, i.e., both the executed and suspended sentence.

ROBB, J., and BAILEY, J., concur.